

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

**MISSISSIPPI STATE CONFERENCE OF THE NAACP, ET AL.**

**Plaintiffs,**

**vs.**

**No. 3:11-cv-159 (TSL)(FKB)**

**HALEY BARBOUR, ET AL.,**

**Defendants,**

**and**

**THE APPORTIONMENT AND ELECTIONS COMMITTEE  
OF THE MISSISSIPPI HOUSE OF REPRESENTATIVES,  
SENATOR TERRY C. BURTON, AND SENATE DEMOCRATIC  
CAUCUS,**

**Intervenors.**

**MOTION OF INTERVENOR HOUSE APPORTIONMENT AND  
ELECTIONS COMMITTEE TO ADOPT 2011 HOUSE AND SENATE  
PLANS AS INTERIM PLANS FOR THE 2011 ELECTION ONLY, TO DEFER  
ISSUE OF SPECIAL ELECTIONS FOR THE TIME BEING, AND TO SET  
A SCHEDULE IN THE FUTURE FOR THE FILING OF ANY MOTIONS FOR  
SPECIAL ELECTIONS, AND INCORPORATED MEMORANDUM OF LAW**

In its order setting the April 22, 2011 status conference, the Court directed the parties to be prepared to discuss “whether the respective plans adopted by the House of Representatives and the Senate during the regular 2011 session satisfy the one person, one vote principle.” No party contended that the plans violated this principle except the Mississippi Republican Party, whose counsel acknowledged that the plans meet the plus or minus 5% standard, but claimed that the House plan nevertheless constitutes a violation under the analysis set forth in a case from Georgia, *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004) (three-judge court). Even so, counsel for the Republican Party conceded that any problem here is “not as extreme” as the violation found in *Larios*.

In light of (1) the positions stated at the April 22 status conference, (2) the limited

amount of time before the statutory June 1 qualifying deadline, during which a plan must be adopted for the elections in time for potential candidates to analyze the new districts and decide whether to run, and (3) the limited amount of time between the June 1 qualifying deadline and the August 2, 2011 primary, the intervenor House Apportionment and Elections Committee moves that the House and Senate plans be adopted as an interim court-ordered plan for the 2011 elections only, that the issue of special elections be deferred for the time being, and that the Court at some point schedule a deadline in the future for any party to file any motion for special election relief if the party believes that any alleged infirmities in the 2011 House or Senate plans justify holding a special election in 2012.

As indicated by the limited nature of the objection to the 2011 House plan, the plus or minus 5% standard is met, and the only alleged infirmity is the Republican Party's claim that the plan runs afoul of the *Larios* analysis, but is "not as extreme" as the problem in *Larios*. Given the limited nature of that claim, and the short amount of time that remains, the plan can be used in the 2011 elections, with the Republican Party retaining the right to litigate the validity of the plan and litigate whether any violation that exists in the plan would justify special election relief in 2012 similar to the special election ordered twenty years ago in *Watkins v. Mabus*, 771 F. Supp. 789 (S.D. Miss. 1991) (three-judge court). In that manner, the Court could defer, for the time being, the complicated question of special election relief and resolve it in the future without the time constraints imposed by the June 1 qualifying deadline and the August 2 primary.

Respectfully submitted,

s/Robert B. McDuff

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Apportionment and Elections Committee

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2011, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification to the following:

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This 25th day of April, 2011.

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